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No. 92-207

In the Supreme Court of the United States

OCTOBER TERM, 1992

UNITED STATES OF AMERICA, PETITIONER

v.

XAVIER V. PADILLA, ET AL.

ON PETITION FOR A WRIT OF CERTIORARI TO THE UNITED STATES COURT OF APPEALS FOR THE NINTH CIRCUIT

REPLY BRIEF FOR THE UNITED STATES

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TABLE OF AUTHORITIES

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1. Respondents argue (Br. in Opp. 11-24)[1] that the Ninth Circuit has not adopted a co-conspirator exception to traditional rules of Fourth Amendment standing. As we demonstrated in our petition (Pet. 8), however, it is plain that the Ninth Circuit has adopted such an exception and has applied that exception in a host of cases. As the court of appeals stated in this case, the Ninth Circuit has "consistently held that a coconspirator's participation in an operation or arrangement that indicates joint

[1] Citations to "Br. in Opp." are to the brief in opposition filed on behalf of, and signed by counsel for, all the respondents (except respondent Warren Strubbe, who is a party in this Court under Sup. Ct. R. 12.4). In addition, respondent Donald Simpson filed a *pro se* brief in opposition.

control and supervision of the place searched establishes standing." Pet. App. 9a.

Respondents contend (Br. in Opp. 17-18) that our position is refuted by the Ninth Circuit's disclaimer of a "co-conspirator exception of general applicability," *United States* v. *Taketa*, 923 F.2d 665, 672 (1991). To the contrary, that disclaimer—in recognizing a more limited "co-conspirator exception" to traditional rules of Fourth Amendment standing, *ibid.*—conclusively demonstrates our point. As we pointed out in the petition (Pet. 9-11), it is true that the Ninth Circuit has limited the sweep of its co-conspirator exception so as to require a defendant to have a position of control within the conspiracy. That does not in any way undermine our claim of conflict, however, because it is undeniably true that the Ninth Circuit is alone in treating membership in a conspiracy as pertinent to the Fourth Amendment analysis. Respondents cite no case (and we are aware of none) from any court outside the Ninth Circuit that treats membership in a conspiracy—whether accompanied by control or not—as a relevant Fourth Amendment factor. See Pet. 13-16.[2]

2. The Ninth Circuit's approach is also contrary to this Court's consistent admonition "that Fourth Amendment rights are personal rights which, like some other constitutional rights, may not be vicariously asserted." *Rakas* v. *Illinois*, 439 U.S. 128, 133 (1978), quoting *Alderman* v. *United States*, 394 U.S. 165, 174 (1969).

[2] Respondents discuss (Br. in Opp. 24-29) several cases from other circuits that, in their view, show that the other courts of appeals decide cases presenting questions of co-conspirator standing consistently with the Ninth Circuit's approach. That contention is without basis. No case cited by respondents treats membership in a conspiracy as relevant to the Fourth Amendment analysis.

See also *United States* v. *Payner*, 447 U.S. 727, 731 (1980). This Court has made plain that "[c]oconspirators and codefendants have been accorded no special standing" to assert Fourth Amendment violations. *Alderman*, 394 U.S. at 172. See also *Standefer* v. *United States*, 447 U.S. 10, 23-24 (1980); *Brown* v. *United States*, 411 U.S. 223, 230 & n.4 (1973). No decision by this Court treats membership in a conspiracy—even if the individual involved is centrally responsible for the conspiracy—as relevant for purposes of Fourth Amendment standing. The Ninth Circuit's analysis accordingly cannot be squared with this Court's Fourth Amendment standing decisions.

3. Respondents argue (Br. in Opp. 36-39) that the Ninth Circuit's decision in this case is correct even without considering their roles in the conspiracy. The courts below concluded, however, that Xavier Padilla and the Simpsons had standing based on their roles in the conspiracy, and did not analyze whether they had a Fourth Amendment interest that was implicated on some other basis by the stop of Arciniega.[3] The court held that the Simpsons' "coordinating and supervising" roles in the "operation" gave them standing. Pet. App. 12a-13a. As to Xavier Padilla, the court thought that it was "inconsequential that he was not present at the stop [and] was unable to exclude others from inspecting the vehicle," because he was "the man in charge [of the] so-

[3] With respect to respondents Jorge and Maria Padilla, the court of appeals remanded to the district court to determine whether their level of "responsibility in the joint venture" was sufficient to give them standing, or whether they were "mere employees" in the operation. Pet. App. 15a. The court did not consider relevant whether they had an actual Fourth Amendment interest in the stop or search of the vehicle, but rather thought that their standing depended on their role in the conspiracy.

phisticated operation." *Id.* at 13a. As we argued in the petition (Pet. 11), the decision below therefore stands or falls on the validity of the Ninth Circuit's doctrine of co-conspirator standing.[4]

In any event, we believe it is clear that under traditional Fourth Amendment analysis, none of the respondents had standing to challenge the stop in this case.[5] The only person whose freedom of movement was affected in any way by the stop was Arciniega, the driver of the vehicle. None of the respondents was present at the time of the stop, and respondents fail to suggest any way in which the stop implicated their right to be free from unreasonable seizures. That conclusion is no different with respect to respondents Donald and Sylvia Simpson simply because they were the owners of the vehicle. It is well established that ownership is not determinative of a

[4] To be sure, the court of appeals did consider (see Pet. App. 9a-14a) factors in addition to respondents' roles in the conspiracy. The court of appeals did not suggest, however, that those factors were sufficient to give any respondent a Fourth Amendment interest irrespective of the conspiracy. The decision of the district court was even more explicit, stating with respect to all the respondents except the Simpsons that their standing was based "solely [on] the joint venture." *Id.* at 23a.

[5] Respondents err in treating the search of the vehicle as relevant to the Fourth Amendment analysis in this case. It is clear from both the district court's (Pet. App. 25a-29a) and the court of appeals' (Pet. App. 17a-21a) decisions that the only illegality here was in the initial decision to stop the vehicle. To be sure, the lower courts found the cocaine that was discovered during the subsequent consensual search of the vehicle to be inadmissible, but not because that search was independently illegal; rather, the courts found that the discovery of the evidence in the vehicle was the product of the illegal stop. See Pet. App. 17a-21a, 31a-34a. Neither court concluded that the search of the trunk constituted an independent Fourth Amendment violation.

Fourth Amendment interest in seized property. See *Rawlings* v. *Kentucky*, 448 U.S. 98, 105-106 (1980); *United States* v. *Salvucci*, 448 U.S. 83, 91-92 (1980). The brief traffic detention of the Simpsons' vehicle, over which they had ceded unqualified control to Arciniega, had absolutely no effect on any expectation of privacy they might have retained in the vehicle. The consensual search of the trunk also did not affect their Fourth Amendment interests, as the record does not reflect that the Simpsons took any steps to maintain an expectation of privacy in the trunk when they released the car to Arciniega.

4. Finally, respondents contend (Br. in Opp. 39-40) that this case is a poor vehicle for resolving the validity of the Ninth Circuit's co-conspirator exception to this Court's rules of Fourth Amendment standing. To the contrary, as we pointed out in the petition (Pet. 16-17), this case is a particularly appropriate candidate for review, inasmuch as the "co-conspirator exception" was invoked to support the court's standing analysis with respect to all six respondents. Four of the respondents (the three Padillas and Warren Strubbe) have no arguable Fourth Amendment interest that was implicated by the stop of the vehicle apart from their roles in the conspiracy. With respect to the Simpsons, the court of appeals relied at least in part on their "participat[ion] in the organization," Pet. App. 12a, to give them standing. If the Ninth Circuit's "co-conspirator standing" rule is wrong, the government is entitled, at the least, to have the standing issue as to the Simpsons decided without reference to that factor.

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For the foregoing reasons and those set forth in the petition, the petition for a writ of certiorari should be granted.

Respectfully submitted.

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Solicitor General

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